

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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|-------------------------|---|------------------------|
| WILLIAM DAVID BURNSIDE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 09-CV-2727-JDT-tmp |
| |) | |
| T. WALTERS, et al., |) | |
| |) | |
| Defendants. |) | |

REPORT AND RECOMMENDATION

Before the court is the Motion for Summary Judgment filed by defendant the City of Memphis ("City") on January 9, 2015. (ECF No. 71.) The City seeks summary judgment on the failure to train claim brought by plaintiff William David Burnside under 42 U.S.C. § 1983, attaching affidavits by Memphis Police Department ("MPD") employees asserting that the defendant officers in question were well trained and detailing the extensive training MPD officers receive. On August 5, 2015, the court entered an order granting Burnside's Rule 56(d) motion for additional time to obtain discovery and respond to the City's motion. (ECF No. 99.) As to the § 1983 claim, it is recommended that the City's motion be denied without prejudice with the right to refile the motion after the parties have engaged in discovery.

The City also argues that to the extent the amended complaint purportedly brings a claim against the City under state law, any such state-law claim should be dismissed pursuant to the discretionary function exception to the Tennessee Governmental Tort Liability Act ("TGTLA"). As set forth in the August 29, 2014 report and recommendation and the September 26, 2014 order adopting the report and recommendation, the amended complaint does not contain any such claims. Because there exist no state-law claims to dismiss (against the City), it is recommended that this specific relief sought be denied as moot.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

August 5, 2015
Date

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.